IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7982 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHAGVANRAM V GEHLOT

Versus

STATE OF GUAJRAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR BD DESAI AGP for respondents

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/09/97

ORAL JUDGEMENT

Heard Mr Pahwa learned advocate for the petitioner and Mr BD Desai learned AGP for the respondents.

The petitioner in this petition has challenged the order dated 15.5.1995 passed by the Collector, Ahmedabad, confirmed in appeal by an order dated 12.8.1996 by the respondent no. 1 i.e. Secretayr, Food & Civil Supplies Department, Gandhinagar under sec. 6A

of the Essential Commodities Act. By virtue of the impugned order the authorities have confiscated 115 bags of wheat i.e. 50% of the stock seized. As can be seen from the allegations made against the petitioner in the show-cause notice, namely; (1) that the petitioner has not displayed the opening stock and price of wheat dated 21.10.1994; (2) not maintaining stock register for wheat and its item after 21.10.1994; (3) not writing full addresses of the purchasers in sale bill book, and; (4) not produced purchase bill of wheat at the time of inspection which was purchased from Prabhat Agency, Kabutarkhana, Ahmedabad on 19.10.1994 by incoming Gate Pass No. 67/2 (74 bags of wheat) and Gate Pass No. 67/2 (129 bags of wheat). As far as the grounds nos. 1 to 3 are concerned, they are not serious but are of technical in nature for which as per the settled law, no order of confiscation can be passed. Thus, the allegation made in ground no. 4 is only required to be taken into consideration. The Collector in his order has stated that even though an opportunity was given to the petitioner to remain present but the petitioner has neither remained present nor produced any written evidence. The petitioner has disputed the said fact in the present petition by contending that he in fact, remained present, however, he was informed that the matter is likely to be adjourned and the next date will be given and therefore petitioner left the office. Without entering into this controversy as to whether the petitioner has remained presentor not, the matter can be disposed of on other grounds. It appears that the petitioner has subsequently produced the bills of purchase of wheat before the Collector. The respondent no. 1 has also made reference about the said fact in his impugned order with respect to the allegation no. 4, however, he has not considered the same only on the ground that the appellant has not given any particulars about the date on which the bills have been produced before the Collector. Thus, it is clear that the appellant has submitted the bills for the purchase of the wheat in question. If that is so, in that event, it is the duty of the Authorities to consider the same instead of discarding the same on other ground.

In this view of the matter, the petition is required to be allowed and is hereby allowed. The impugned orders dated 15.5.1995 passed against the petitioner by Collector, Ahmedabad and confirmed in appeal vide order dated 12.8.1996 by the Secretary, Food and Civil Supplies Department, Gandhinagar are set aside. The matter is remanded back to the respondent no. 1 with a direction to consider the bills produced by the

petitioner for the purchase of wheat inquestion with respect to the allegations made in ground no. 4 and to take a fresh decision in the matter after hearing the petitioner in view of the fact that present proceedings are of the year 1994, the respondent no. 1 shall dispose of the matter as expeditiously as possible preferably within 8 weeks from the receipt of the writ of this court. Rule is made absolute to the aforesaid extent.

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